UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

STATE FARM MUTUAL AUTOMOBILE INSURANCE CO.,	)	
Plaintiff	)	
v.	)	Civil No. 04-142-B-W
VAUGHN MITCHELL and CARLA HALL,	)	
Defendants	)	

RECOMMENDED DECISION

In this diversity action, plaintiff State Farm Mutual Automobile Insurance Company seeks a declaration of its maximum liability on an insurance policy issued to defendant Vaughn Mitchell in association with litigation currently pending in state court between Mitchell and co-defendant Carla Hall.[1] State Farm now moves for summary judgment (Docket No. 14) and I recommend that the court **GRANT** the motion.

Summary Judgment Material Facts

The following facts are drawn from the parties' Local Rule 56 statements of material facts. On or about October 8, 2003, Hylie K. Hall, Jr., husband of Carla Hall was involved in a motor vehicle accident that resulted in his death. (Def.'s St. of Add'l Mat. Facts, Docket No. 24, ¶ 1.) Hylie Hall endured conscious pain and suffering prior to

[1] Because the dispute concerns coverage in excess of $100,000.00 and State Farm proffers in its memoranda that it has tendered to defendant Hall what it considers to be full coverage in the amount of $100,000.00, Hall's claim in her motion to dismiss (Docket No. 6 at 2) that this court lacks subject matter jurisdiction and that the amount in controversy may be less than $75,000.00 makes no sense to me. Hall's motion to dismiss is addressed in a companion recommended decision.

his death. (Id., ¶ 2.) Carla Hall was not present at the scene of the tragedy; however, she nevertheless suffered emotional and physical injury as a result of her husband's death. (Id., ¶ 3.) Hylie Hall also had two children as heirs in addition to Carla Hall. (Id., ¶ 4.) Carla Hall and the children have suffered the loss of the comfort, society and companionship of Hylie Hall following his death. (Id., ¶ 5.) Vaughn Mitchell, the driver of the vehicle that struck Hylie Hall, Jr., was issued an automobile insurance policy by State Farm. (Id., ¶ 6.)[2]

On or about June 30, 2004, Carla Hall, individually and as Personal Representative of the Estate of Hylie K. Hall, Jr., commenced a civil action against Vaughn Mitchell in the Hancock County Superior Court for the State of Maine, Docket No CV-04-047 (the "Underlying Complaint"). (Pl. St. of Mat. Facts, Docket No. 15, ¶ 1.) The Underlying Complaint alleges that on October 8, 2003, Hylie K. Hall, Jr., was operating a motorcycle on Route 3 in Trenton, Maine when a motor vehicle operated by Vaughn Mitchell struck the motorcycle operated by Hylie Hall, causing him bodily injuries and resulting in his death (the "Accident"). (Id., ¶ 2.) The Underlying Complaint does not contain any allegation that Carla Hall was physically present when the Accident occurred. (Id., ¶ 3.) In fact, Carla Hall was not physically present when the Accident

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[2] Hall's final statement was denied by State Farm and made the subject of a motion to strike contained within State Farm's response to the plaintiff's statement of additional fact. I have disregarded the disputed "fact" for the reason of its immateriality to the issues before this court. The statement reads:

> State Farm Mutual Automobile Insurance Company and its agent, Wayne Buzzel failed to comply with page 1 of the Policy under 6091P Amendment of Cancellation and Renewal Conditions it states: "You will be able to select from those coverages which continue to be available from State Farm Mutual Automobile Insurance Company. Coverage will be provided by our car policy, including any revisions that may be made to it." As such, Plaintiff State Farm has breached contract on the basis of failure to provide adequate coverage.

(Def.'s St. of Add'l Mat. Facts, Docket No. 24, ¶ 7.)

occurred. (Id., ¶ 4.) In the Underlying Complaint, Carla Hall, as the Personal Representative of the Estate of Hylie K. Hall, Jr., seeks to recover: (1) damages for Hylie Hall's wrongful death pursuant to 18-A M.R.S.A. §2-804; (2) damages for Hylie Hall's conscious suffering pursuant to 18-A M.R.S.A. §2-804; and (3) damages pursuant to 18-A M.R.S.A. §2-804(b) for the medical, hospital care and treatment, and funeral expenses incurred by the Estate of Hylie K. Hall, Jr. (Id., ¶ 5.) In addition, Carla Hall asserted claims in the Underlying Complaint, individually and on behalf of herself, to recover damages for her pecuniary losses and her loss of consortium caused by her husband's death. (Id., ¶ 6.)[3]

The automobile insurance policy (the "Policy") that State Farm issued to Vaughn Mitchell recites liability limits in the amount of $100,000 per person and $300,000 per accident. (Docket No. 15, ¶ 7.)[4] A true and accurate copy of the Policy is attached as Exhibit B to State Farm's complaint.[5] (Docket No. 1, Ex. B.) The "Limits of Liability" provision contained in Policy Section I – Liability - Coverage A provides:

> The amount of bodily injury liability coverage is shown on the declarations page under "Limits of Liability – Coverage A – Bodily Injury, Each Person, Each Accident." Under "Each Person" is the amount

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[3] Although Carla Hall admitted each of the last two factual assertions in her answer (Docket No. 8, ¶¶ 11-14),she denies them in her opposing statement of material facts on the ground that her complaint "contains more claims" and "all of the foregoing claims must be examined, each raising an issue of fact." (Docket No. 24, ¶¶ 5-6.) Hall cites her underlying complaint in support of her denial. (Docket No. 1, Ex. A.) I have examined the underlying complaint and I am unable to identify any genuine basis for treating State Farm's characterizations of Hall's claims as disputed.

[4] Although Hall admitted this fact in her answer (Docket No. 8, ¶ 19), Hall qualifies this statement in her opposing statement of material facts, asserting that "[w]hether there should have been more insurance coverage offered to Defendant Vaughn Mitchell by Plaintiff State Farm is an issue" and references the deposition of Vaughn Mitchell, pages 13-14, which I cannot find in the record. I credit her admission in her answer. Furthermore, even assuming that there is a dispute of fact regarding this issue, whether Vaughn Mitchell's coverage was for $100,000.00/300,000.00 or $ 1,000,000.00/3,000,000.00 each person/each accident, is immaterial to the issue presented by this motion.

[5] In its statement of material facts, State Farm asserts that a true and accurate copy of the policy is attached as exhibit 1 to the Declaration of Michael J. Gately and Hall admits the statement. Although the Gately Declaration properly authenticates the policy, the policy is not actually attached to Gately's Declaration, but to State Farm's complaint.

> of coverage for all damages due to ***bodily injury*** to one ***person.*** "***Bodily injury*** to one ***person***" includes all injury and damages to others resulting from this ***bodily injury***, and all emotional distress resulting from this ***bodily injury*** sustained by other ***persons*** who do not sustain ***bodily injury.*** Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person," for all damages due to ***bodily injury*** to two or more ***persons*** in the same accident.

(Docket No. 15, ¶ 10; Policy at 8-9.) The Policy defines "bodily injury" as "bodily injury to a ***person*** and sickness, disease or death which results from it." (Docket No. 15, ¶ 11; Policy at 2.) The Policy's provides the following limitation on liability:

> The amount of bodily injury liability coverage is shown on the declarations page under "Limits of Liability – Coverage A – Bodily Injury, Each Person, Each Accident." Under "Each Person" is the amount of coverage for all damages due to ***bodily injury*** to one ***person***. "***Bodily injury*** to one ***person***" includes all injury and damages to others resulting from this ***bodily injury***, and all emotional distress resulting from this ***bodily injury*** sustained by other ***persons*** who do not sustain ***bodily injury***. Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person," for all damages due to ***bodily injury*** to two or more ***persons*** in the same accident.

(Docket No. 15, ¶ 15, Policy at 8-9 & declaration page.)

Discussion

Summary judgment is warranted only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment must demonstrate an absence of evidence to support the nonmoving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). To determine whether this burden is met, the court must view the record in the light most favorable to the nonmoving party and give that party the benefit of all reasonable inferences in its favor.

Nicolo v. Philip Morris, Inc., 201 F.3d 29, 33 (1st Cir. 2000). Once the moving party has made a preliminary showing that no genuine issue of material fact exists, the nonmovant must "produce specific facts, in suitable evidentiary form, to establish the presence of a trialworthy issue." Triangle Trading Co. v. Robroy Indus., Inc., 200 F.3d 1, 2 (1st Cir. 1999) (citation and internal punctuation omitted); Fed. R. Civ. P. 56(e). "As to any essential factual element of its claim on which the nonmovant would bear the burden of proof at trial, its failure to come forward with sufficient evidence to generate a trialworthy issue warrants summary judgment to the moving party." In re Spigel, 260 F.3d 27, 31 (1st Cir. 2001) (citation and internal punctuation omitted).

State Farms moves for summary judgment on the ground that the policy limitation is clear and asks the court to declare that Carla Hall's loss of consortium claim is subject to the same $100,000 "each person" policy limit as the estate's claim for damages. (Pl.'s Mot. Summ. J., Docket No. 14, at 2.) Hall responds that the Policy's limitation language is ambiguous and must be construed against State Farm and in favor of a finding that Hall's loss of consortium claim is not subject to the $100,000 each person limitation. In particular, Hall maintains that the Policy is ambiguous because it does not mention loss of consortium claims by name or indicate how they are to be categorized. (Def.'s Opp., Docket No. 23, at 4-5.) Hall also argues that her statutory loss of consortium claim requires special consideration in light of recent Law Court precedent. (Id. at 5.) I fail to see the ambiguity in the Policy language and agree with State Farm that Hall's loss of consortium claim is subject to the same $100,000 "each person" limitation as the estate's claim. I also conclude that the precedent Hall points to has no bearing on State Farm's motion.

"In Maine, courts first examine relevant policy language to determine whether it is unambiguous; if so, it is enforced as written." Western World Ins. Co. v. American and Foreign Ins. Co., 180 F. Supp. 2d 224, 230 (D. Me. 2002). Language of an insurance contract is ambiguous only if it is reasonably susceptible to more than one plausible interpretation. See American Employers' Ins. Co. v. DeLorme Pub. Co., Inc., 39 F.Supp.2d 64, 82 (D. Me. 1999). The "each person" limitation that is at issue in this case is not reasonably susceptible to more than one meaning.

The undisputed Policy language at issue provides as follows:

> Under "Each Person" is the amount of coverage for all damages due to ***bodily injury*** to one ***person.*** "***Bodily injury*** to one ***person***" includes all injury and damages to others resulting from this ***bodily injury***, and all emotional distress resulting from this ***bodily injury*** sustained by other ***persons*** who do not sustain ***bodily injury.***

The significance of this language is obvious. If there is a claim for damages that is based not upon the claimant's own bodily injury from an accident, but upon the fact that another person received bodily injury in the accident, then for purposes of the Policy's limits on liability, that person's damages are lumped with the damages of the person who received bodily injury and are subject to the same "each person" limit. Hall's loss of consortium claims are subject to this provision because she was not involved in that accident and her claims for loss of consortium merely arise from her husband's receipt of bodily injuries in the accident. Because the declarations page of the Policy provides that $100,000 is the maximum "amount of coverage for all damages due to ***bodily injury*** to one ***person***" and because "'bodily injury to one person' includes all injury and damages to others resulting from this bodily injury," Carla Hall's loss of consortium claims and the Estate's claims are subject to the same $100,000 limitation. This conclusion is compelled not only by the

Policy language, but also by Gillchrest v. Brown, 532 A.2d 692 (Me. 1987), in which the Law Court arrived at a similar conclusion based on similar language. Id. at 693 (reasoning that the plaintiff-wife's claim for loss of consortium arose out of, and was derivative from, the bodily injury sustained by her husband); see also New Hampshire Indem.Co. v. Dunton, No. CV-02-164, 2003 WL 1618563, 2003 Me. Super. LEXIS 7 (Penob. Sup. Ct. Jan. 17, 2003) (recognizing Gillchrest as dispositive under like circumstances).

Hall maintains that this case differs from Gillchrest because this is a statutory wrongful death action brought pursuant to 18-A M.R.S.A. § 2-804, whereas the loss of consortium claim in Gillchrest derived from a common law negligence case. (Docket No. 23 at 5-7.) She relies on the Law Court's opinions in Butterfield v. Norfolk & Dedham Mutual Fire Insurance Company, 2004 ME 124, 860 A.2d 861, Jack v. Tracy, 1999 ME 13, 722 A.2d 869, and Flaherty v. Allstate Insurance Company, 2003 ME 72, 822 A.2d 1159. (Id. at 6-7, 12-13). Each of these opinions concerns restrictions the Law Court has placed on the ability of insurance companies to limit the coverage afforded in uninsured motorist insurance contracts that are mandated by Maine insurance law. The present declaratory judgment action does not concern uninsured motorist coverage or an attempt to deny coverage to those "legally entitled to recover" by virtue of a mandatory insurance provision, Butterfield, 2004 ME 124, ¶ 18, 860 A.2d at ___, but a limit on the amount of money available for the coverage actually afforded under the Policy. Furthermore, unlike 24-A M.R.S.A. § 2902, Maine's uninsured motorist statute, 18-A M.R.S.A. § 2-804, Maine's wrongful death statute, is not an insurance law, let alone a law

that is designed to define the type of coverage that must be afforded in automobile insurance contracts issued to Maine residents.[6]

Conclusion

Based upon the foregoing I recommend that the court **GRANT** plaintiff's motion for summary judgment.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, and request for oral argument before the district judge, if any is sought, within ten (10) days of being served with a copy thereof. A responsive memorandum and any request for oral argument before the district judge shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

Dated: January 11, 2005

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY v. MITCHELL et al
Assigned to: JUDGE JOHN A. WOODCOCK, JR
Cause: 28:1332 Diversity-Personal Injury

Date Filed: 08/16/2004
Jury Demand: None
Nature of Suit: 110 Insurance
Jurisdiction: Diversity

[6] In a motion to dismiss (Docket No. 6) and a motion captioned "Request for Certified Question to Maine Supreme Judicial Court" (Docket No. 9), Hall asserts that because the Law Court has recently concluded that a loss of consortium claim is an "independent" rather than "derivative" claim, Hardy v. St. Clair, 1999 ME 142, ¶ 11, 739 A.2d 368, 372, her claim for loss of consortium cannot be subjected to the same limit of liability as the estate's primary claim. Those motions are addressed in a companion recommended decision. The issue in Hardy was whether or not a third party tortfeasor can avail itself of certain defenses, such as comparative negligence or accord and satisfaction, against both the physically injured party and the party claiming loss of consortium. That issue has nothing to do with the interpretation of the policy language in question in this case. As a purely factual matter there is no question that both the Wrongful Death Act and the common law loss of consortium claim brought by Hall derive from the bodily injury suffered by her spouse.

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